

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENT UNIT

In the Matter of the Gaustad
Petition for the Concurrent
Detachment and Annexation
of Certain Land pursuant to
Minnesota Statutes, Section
414.061 (D-435 St. Francis)
(A-7438 Bethel)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

The above-entitled matter came on for hearing before Administrative Law Judge Raymond R. Krause at 10:00 a.m. on Thursday, November 16, 2006, at the St. Francis City Hall, 23340 Cree Street NW, St. Francis, Minnesota. The hearing was recorded on audiotape and concluded that day. The hearing record remained open for the submission of posthearing briefs. The hearing record closed with the receipt of those briefs on November 30, 2006.

John J. Steffenhagen, Esq., of the firm of Larkin Hoffman Daly & Lindgren Ltd., 1500 Wells Fargo Plaza, 7900 Xerxes Avenue S., Minneapolis, MN 55431-1194, appeared representing the Petitioners, Steve Gaustad and Ry-Chel Gaustad. Scott Lepak, Esq., of the firm of Barna, Guzy & Steffen, Ltd., 400 Northtown Financial Plaza, 200 Coon Rapids Blvd., Minneapolis, MN 55433-5894, appeared on behalf of the City of St. Francis. There was no appearance on behalf of the City of Bethel.

STATEMENT OF ISSUE

The issue in this proceeding is whether or not the Petition for Concurrent Detachment and Annexation should be granted or denied based upon the factors set out in statute.^[1] The ALJ finds that the Petition should be granted.

Based upon all of the testimony, exhibits and the record in this proceeding, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History

1. On May 18, 2006, Steve Gaustad and Ry-Chel Gaustad ("property owners") prepared a petition filed with the Municipal Boundary Adjustment Unit ("MBA") seeking the concurrent detachment and annexation of approximately 40 acres of property located in the City of St. Francis, to the City of Bethel. The area proposed for detachment and annexation ("the Subject Property") is registered as PIN 36-34-24-24-0001 and legally described as follows:

Southeast Quarter of Northwest Quarter of Section 36, Township 34, Range 24, Anoka County, Minnesota, together with a non-exclusive easement for the purposes of ingress and egress over and across the East 66 feet of that part of the Northeast quarter of Northwest Quarter of Section 36, Township 34, Range 24, Anoka County, Minnesota, lying Southerly of the Northerly 532 feet thereof, said East 66 feet being measured perpendicular to the East line of said Northeast Quarter of Northwest Quarter. Also, together with a non-exclusive easement for ingress and egress as created in Document No. 12335399.^[2]

2. On May 18, 2006, the City Council of the City of Bethel passed a resolution supporting the annexation petition of the Subject Property.^[3]

3. The Gaustad's petition was filed with the MBA on May 26, 2006. The MBA set the petition on for hearing for July 18, 2006. Notice of the hearing was published in the Anoka County Union on Friday, July 7, 2006 and Friday, July 14, 2006. The hearing opened on July 18, 2006 and was immediately continued to an indefinite date and referred to the undersigned ALJ for hearing.

4. A prehearing conference was conducted by the Administrative Law Judge on September 11, 2006. The hearing was set for November 15 and 16, 2006. Notice of the reconvened hearing was issued and duly published in the Anoka County Union newspaper on Friday, October 27 and Friday, November 3, 2006.

5. At the hearing, the parties entered into a stipulation with regard to certain facts and exhibits in this matter. The stipulation has been incorporated into these Findings of Fact. No agreement was reached between the parties as to a division of costs per Minn. Stat. § 414.12, subd. 3.

Area Characteristics

6. St. Francis is a city with a total area of approximately 23.3 square miles.^[4] The urban core of St. Francis is located along the west bank of the Rum River. Large tracts of minimally developed land extend outside (primarily to the east) of this urban core.^[5]

7. Bethel is bounded on north, west, and south by St. Francis. The City of East Bethel forms the eastern boundary of Bethel. The total area of Bethel is approximately .9 square miles.^[6]

8. The population of St. Francis as measured in the 1990 census was 2,538 residents in 760 households. In the 2000 census those numbers increased to 4,910 residents in 1,638 households. The Metropolitan Council estimated future demographics as 7,700 residents in 2,800 households by 2010, 10,400 residents in 4,000 households by 2020, and 12,800 residents in 5,000 households by 2030.^[7]

9. The population of Bethel as measured in the 1990 census was 394 residents in 130 households. In the 2000 census those numbers increased to 443 residents in 149 households. The Metropolitan Council estimated future demographics as 450 residents in 160 households by 2010, 460 residents in 180 households by 2020, and 510 residents in 200 households by 2030.^[8]

10. Land uses in Bethel are predominantly agriculture (52.1 percent) and wetlands/water (including Sandshore Lake, 26.4 percent). Single-family residential uses comprise 18.8 percent of Bethel. The residential uses are located to the east of University Avenue, to the west of University Avenue running north of CSAH 24 to Sandshore Lake, and in the southwestern corner of Bethel, adjacent to the Subject Property. Industrial uses comprise 0.3 percent of land uses and are located along the western side of University Avenue, in the eastern third of Bethel. Commercial uses comprise 1.1 percent and are located in the same general area as industrial uses.^[9]

11. The primary urban area in St. Francis is over two miles to the west of the Subject Property. The primary urban area in Bethel is approximately one-half mile from the Subject Property. Commercial areas in Bethel are closer to the Subject Property than the commercial areas in St. Francis.^[10]

12. The nearest improved road to the Subject Property is Kumquat Street NW in Bethel.^[11] Due to the location of residences at the southern end of Kumquat Street, access to the Subject Property by way of that improved road is not impossible, but not the best option readily available.^[12] The nearest improved road that is accessible by the Subject Property is CSAH 24. That highway is reached by the easement along the eastern side of the Bethel Residences and an unimproved roadway along that easement affords the owners of those homes access to CSAH 24. University Avenue is located to the east of the subject

property, but it is both distant and located on the opposite side of a railroad right-of-way, making road access on that side impractical. The nearest improved roads to the southeast are on the far side of wetlands, making access from that direction impractical.^[13]

Subject Property

13. The Subject Property is approximately 40 acres situated on the northern border of St. Francis and adjoining the western end of the southern border of Bethel. The Subject Property is bordered on the west by a 70-acre parcel of undeveloped woodland and wetland ("Beach Property). The Subject Property is bordered on the south by a parcel containing significant wetlands. The Subject Property is bounded on the east by a parcel containing significant wetlands.^[14] The Subject Property is bordered on the north by residential property owners in Bethel.^[15] The northern border of the Subject Property comprises 25% of the total Subject Property boundary. The entire northern border of the Subject Property abuts Bethel. The remaining 75% of the Subject Property's boundary is within St. Francis.^[16]

14. Access to the Subject Property is by easement extending across the two residential properties to the north (through Bethel)(collectively "the Bethel Residences"), following an unimproved roadway affording access to those properties and joining 237th Avenue NW (also known as CSAH 24) in Bethel. The unimproved roadway is currently maintained by the property owners of the Bethel Residences.^[17]

15. The Subject Property is in an area categorized as rural residential and zoned 4B4-Residential nonhomestead.^[18] This zoning designation is the same as that of the Bethel Residences. The Subject Property is not the subject of any current or planned assessments by St. Francis.^[19]

16. Of the Subject Property's 40 acres, 17 are available for construction. The remaining 23 acres contain potential wetland complexes and four Department of Natural Resources (DNR) designated wetlands.^[20] The Subject property is located within the Rum River Watershed and the Upper Rum River Watershed Management Organization.^[21]

17. The Subject Property has been part of St. Francis since the city was incorporated.^[22] The Subject Property receives no governmental services other than fire and police protection.

Administration

18. Traditionally, the terms "urban" and "city" have been used synonymously by planners to connote the availability of a full range of services, including central sanitary sewer, public water, schools, higher levels of police and fire protection, a full range of housing types and densities, and significant

employment opportunities. Police protection in an urban community is available 24 hours per day, 7 days per week, for example.

19. St. Francis has a number of these urban characteristics. Due to its size, St. Francis has a developed urban core area, with a larger number of local businesses. St. Francis has a Mayor, City Council, Planning Commission, City Clerk, and other staff.

20. St. Francis provides police protection to its own residents and businesses through its own police department. Bethel has contracted with St. Francis to obtain police protection for residents and businesses of Bethel through the St. Francis police department. Additional police protection is obtained through the Anoka County Sheriff's Department, as needed.^[23]

21. St. Francis provides fire protection through its own fire department. The Subject Property is approximately three miles away from the St. Francis fire hall.^[24]

22. Bethel has its own volunteer fire department.^[25] The Bethel fire hall is located one-half mile from the Subject Property.^[26] Response time from the Bethel fire hall to the Subject Property is anticipated to be shorter than that from St. Francis.^[27]

23. St. Francis and Bethel are both in the ISD No. 15 School District. The proposed detachment and annexation would not affect the school district boundary or the boundaries of any other municipalities than Bethel and St. Francis.^[28] Both St. Francis and Bethel are in Anoka County.

Water and Sewer

24. St. Francis has a municipal sewer system that links to its own wastewater treatment plant (WWTP). The nearest access to the sewer system from the Subject Property is approximately 3 miles away. St. Francis public works staff held discussions to determine whether sewer service could be extended east of the Rum River, or whether a second WWTP would be required to provide sewer service to those areas. Extension of the existing St. Francis sewer system to serve the Subject Property is not economically feasible.^[29] In addition, the Beach parcel has been placed in trust subject to a conservation easement which prohibits access across that parcel for sewers or roads. The effect of the conservation easement on the Beach parcel is to render access to municipal sewer impossible, for all practical purposes. St. Francis does not have its own municipal water supply.^[30]

25. Bethel does not have its own water supply. Water is supplied by private wells. Bethel has a municipal sewer system that provides service to the residents and local businesses and utilizes its own WWTP. The WWTP currently serves 122 connections, and has undergone an upgrade to its WWTP capacity. Bethel's WWTP has the capacity for up to 74 new residential connections beyond

all currently planned connections.^[31] The nearest access to the Bethel municipal sewer system is 800 feet from the Subject Property within the existing easement access along the Bethel Residences.^[32] The Bethel sewer line has capacity for reasonable development of the Subject Property.

26. Without access to municipal sewer services and a WWTP, wastewater would need to be addressed through an individual sewage treatment system (“ISTS” or “septic system”). The soils underlying the area around the subject property are part of the Anoka Sand Plain, comprised of loamy soils with the characteristics of high groundwater. The high groundwater table makes the use of ISTS problematic. Any installed system would need to be of the mound variety (installed above ground level) and such systems would be difficult to maintain with the soils in the areas. Use of ISTS systems provides inferior water quality protection when compared to a centrally-operated WWTP.^[33]

27. An ISTS failure in the vicinity of the Subject Property could result in the contamination of area wetlands with untreated wastewater. The high groundwater table of the soils in the area of the Subject Property would exacerbate any such contamination and potentially risk contamination of Sandshore Lake, an important natural resource of the City of Bethel. Connection to a WWTP through a municipal sewer system eliminates the risk of such contamination.^[34]

Local Comprehensive Plans

28. The City of St. Francis adopted a Comprehensive Plan that is scheduled for review in 2008. The Metropolitan Council commented on the St. Francis Comprehensive Plan, noting that accommodation of growth that balances residential, commercial, and industrial uses is intended while maintaining a “small town atmosphere.”^[35] Also noted was the inclusion of “policies to protect and preserve sensitive natural areas, open space, trails and the Rum River scenic areas through clustering and project design requirements.”^[36]

29. The City of Bethel adopted a Comprehensive Plan that was reviewed by the Metropolitan Council. The Metropolitan Council commented on the Bethel Comprehensive Plan, requiring that nonpoint source pollution of waterbodies, density of residential development, and scope of Bethel’s waste water treatment areas be addressed.^[37] Additional development was conditioned an increase in capacity of Bethel’s wastewater treatment plant (WWTP).^[38]

Fiscal Matters

30. The record does not contain any evidence regarding the net tax capacity, current levy, operating budget of either St. Francis or Bethel. The total property tax for 2005 on the Subject Property was \$995.00, but only a portion of that total is received by St. Francis.^[39]

31. While the actual numbers are not in the record, the evidence in the record supports an inference that the tax capacity, levy amount, and operating budget of St. Francis is far larger than that of Bethel. Further, the significant anticipated growth in population and number of households supports an inference that the loss of the municipal share of property tax revenue is insignificant to the overall revenue of St. Francis.

32. If developed to add two residences, the property taxes on the Subject Property will increase. If developed, larger tax revenues will be received by the municipality and by ISD #15, than are currently received from the property tax on the Subject Property.

Zoning/Planning

33. The owners of the Subject Property have made consistent and reasonable efforts to obtain approval to build on the Subject Property, consistent with the zoning ordinances of St. Francis. The St. Francis Planning Commission and St. Francis City Council have been openly hostile toward these efforts. A St. Francis city official attempted to require the owners to pay St. Francis an estimated \$5,000 to cover the costs that the official asserted would result from the application for a building permit. There is no evidence that any fee schedule has been adopted by St. Francis that would justify such a demand.^[40]

34. After having been frustrated by their experience with St. Francis, the property owners explored the possibility of detachment and annexation by Bethel. The Bethel City Council welcomed the prospect of adding the Subject Property as a natural fit with the existing land uses on the Bethel side of the boundary. The planned development was seen as directly benefiting several existing Bethel residents who would obtain better road access from their homes to CSAH 24. A representative of the St. Francis City Council appeared at the July 6, 2006 Bethel City Council meeting. The representative acknowledged that the annexation “made sense” from a business standpoint, but should be refused to maintain good relations between the two Cities.^[41]

Metropolitan Council

35. The Metropolitan Council’s current role is to review and comment on plans, addressing each plan’s compatibility and conformity with regional plans and systems, with an eye toward possible adverse impacts on the regional system. The Council has had the power to direct a change in the local comprehensive plan.

36. The Metropolitan Council reviewed the St. Francis Comprehensive Plan on July 25, 2001. The Metropolitan Council did not require any amendments to the Comprehensive Plan. The community goals set out in the Comprehensive Plan emphasize clustered growth and achieve an overall density

of one unit per ten acres in the Rural Residential area.^[42] The review of the Bethel Comprehensive plan promoted a similar density standard.^[43]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter through the MBA under Minn. Stat. §§ 414.09, 414.02, 414.031, and 414.12.
2. Proper notice of the hearing in this matter has been given.
3. The subject area described in the Petition (D-435) (A-7438) is urban or suburban in character.
4. Detachment of the Subject Property from St. Francis and annexation to Bethel is not required to protect the public health, safety and welfare.
5. Detachment and annexation of the Subject Property is in the best interest of the Subject Property owners, and in the best interests of both the City of Bethel and the City of St. Francis.
6. The remainder of the City of St. Francis would not suffer undue hardship by virtue of the annexation of the Subject Property by Bethel.
7. Detachment of the Subject Property and its concurrent annexation to Bethel would result in some benefits to St. Francis.
8. The proposed detachment and concurrent annexation would, on balance, be in the best interests of the City of St. Francis.
9. Citations to the hearing record or exhibits in these Findings of Fact do not mean that all evidentiary support in the record has been cited.
10. These conclusions are arrived at for the reasons set out in the Memorandum which follows and which is incorporated into these conclusions by reference.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

1. IT IS HEREBY ORDERED that the Petition for Detachment and Concurrent Annexation is GRANTED.

2. IT IS FURTHER ORDERED that the costs of this proceeding are divided 30 percent to the Petitioners and 70 percent to the City of St. Francis per Minn. Stat. § 414.12, subd. 3.

3. IT IS FURTHER ORDERED that the effective date of this Order is December 29, 2006.

Dated: December 19, 2006

s/Raymond R. Krause

RAYMOND R. KRAUSE
Chief Administrative Law Judge

Taped: Five tapes. No transcript prepared.

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.061, 414.09, 414.12. Any person aggrieved by this Order may appeal to Anoka County District Court by filing an Application for Review with the Court Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.^[44]

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within 7 days from the date of the mailing of the Order.^[45] However, no request for amendment shall extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

MEMORANDUM

This is a concurrent detachment and annexation proceeding under Chapter 414 to consider a petition filed with the Municipal Boundary Adjustment Unit. The Gaustads seek to have their 40-acre property in the northeastern portion of St. Francis detached and annexed to the bordering City of Bethel. The reason for the detachment and annexation is to allow the Gaustads to build up to two homes on the upland portions of their property. Their efforts to obtain building permits from St. Francis have been frustrated due to the inability of St. Francis to provide roads, wastewater treatment or other municipal services. This has led them to consider annexation to the adjacent municipality of Bethel.

Statutory Factors

Concurrent detachment and annexation of property by the landowner is governed by Minn. Stat. § 414.061.^[46] In arriving at a determination in such a case, the thirteen factors set out in Minn. Stat. § 414.02 subd. 3 are to be considered. The following discussion relates these factors to the evidence in this hearing record:

a. Present population and number of households, past population and projected population growth for the subject area.

St. Francis is significantly larger than Bethel and growing rapidly. Large areas of St. Francis remain undeveloped. Most of the existing and planned residential and commercial development is concentrated on the western end of the city, distant from the Subject Property. Bethel is smaller than St. Francis and growing very slowly. The disparity in size is expected to increase significantly over the next 25 years. The growth of St. Francis, however, is not occurring anywhere near the Subject Property. While the usual pattern is for attachment of property to the rapidly growing municipality, there are sound reasons for the difference in approach regarding this proceeding.

Bethel has taken specific actions to accommodate growth of the sort contemplated by the property owners in this proceeding. St. Francis has no plans to accommodate development of any kind in this area. Second, the conservation easement established for the Beach property ensures that little development (and none of a residential nature) can take place on the 70-acre parcel immediately to the west of the Subject Property. Third, the wetlands to the south and east will make the provision of services by St. Francis to the subject property difficult and costly for St. Francis. The cost of providing services to the Subject property are likely to far outweigh the additional revenue gained from higher property taxes, especially when compared to provision of services by Bethel. This factor strongly supports detachment and annexation.

b. Quantity of land within the subject area; the natural terrain including recognizable physical features, general topography, major watersheds, soil conditions and such natural features as rivers, lakes and major bluffs.

Both St. Francis and Bethel are essentially suburban in nature with significant amounts of agricultural land surrounding residential developments. The terrain of the subject area and the surrounding parcels in St. Francis is wetlands and wooded uplands. The nearest significant geographic feature is Sandshore Lake. The lake is located north of the subject property and entirely within the boundaries of the City of Bethel. St. Francis and Bethel have similar topography.

There are no physical features of either St. Francis or Bethel that will prevent either detachment or annexation. The significant scope of wetlands in the area suggests that any development should be made in the manner most likely to protect this resource. Provision of road access and sewer service

through Bethel is the most efficient and protective means of developing the Subject Property while ensuring the environmental quality of the surrounding wetlands.

(c) Present pattern of physical development, planning, and intended land uses in the subject area including residential, industrial, commercial, and institutional land uses and the impact of the proposed action on those uses.

Development has been most significant in St. Francis in the western end, furthest from the Subject Property. The intended uses of the land surrounding much of the Subject Property are for conservation easements that prohibit development or the extension of utilities or roadways across those parcels to the Subject Property. There are no plans by St. Francis to develop roads or sewer service in the vicinity of the Subject Property.

There is development nearby the Subject Property that is similar to the development proposed for the Subject Property. All of that development is on the Bethel side of the boundary. With the absence of any proposed road development, the only means by which the Subject Property can be developed is through annexation by Bethel. Detachment from St. Francis and annexation by Bethel will not change the planned use or the character of the Subject Property, but will significantly reduce both the costs and the environmental impacts of that use.

(d) Present transportation network and potential transportation issues, including proposed highway development.

St. Francis and Bethel are served by the same county road system and state highways. The only significant issues regarding transportation are: 1) access to a nearby road to allow for reasonable ingress and egress for the Subject Property and 2) the impossibility of obtaining a building permit from St. Francis until the Subject Property is served by a road. The only provision for road access to the Subject Property arises from annexation to Bethel. The costs to St. Francis to extend any existing road to serve the Subject Property are prohibitive due to the need to mitigate wetland impacts arising from that road construction.^[47] St. Francis has no plans to extend any road to serve the parcel. This factor clearly favors detachment and annexation as a benefit to both St. Francis and Bethel.

(e) Land use controls and planning presently being utilized in the subject area, including comprehensive plans, policies of the Metropolitan Council; and whether there are inconsistencies between proposed development and existing land use controls.

St. Francis has a Comprehensive Plan that was reviewed by the Metropolitan Council on July 25, 2001. The Metropolitan Council did not require any amendments to the Comprehensive Plan. The community goals set out in the Comprehensive Plan emphasize clustered growth and achieve an overall density of one unit per ten acres in the Rural Residential area. Long-term limitations on the WWTP capacity of St. Francis were noted, but this is not relevant to this matter, since extension of sewer service to the Subject Property by St. Francis is not practical.^[48] The proposed development is consistent with the land uses and densities to be maintained for the area by the St. Francis Comprehensive Plan.

Bethel has a Comprehensive Plan which was reviewed by the Metropolitan Council on March 8, 2000. The Metropolitan Council did not require any amendments to the Comprehensive Plan. Bethel was directed to adopt the Metropolitan Council's Interim Strategy to Reduce Nonpoint Source Pollution to All Metropolitan Water Bodies within 120 days of the review. The Metropolitan Council urged Bethel to adopt development tools that would limit the density of residences in currently undeveloped Rural Residential areas to one unit per ten acres. Ongoing limitations on the WWTP capacity of Bethel was noted, but the slow rate of growth is consistent with the available capacity.^[49] Extension of sewer service to the Subject Property by Bethel is superior to installation of an ISTS system and is likely to result in less nonpoint source pollution to water bodies in both St. Francis and Bethel. The proposed development is consistent with the land uses and densities to be maintained for the area by the Bethel Comprehensive Plan.

(f) Existing levels of governmental services being provided to the subject area, including water and sewer service, fire rating and protection, law enforcement, street improvements and maintenance, administrative services, and recreational facilities and the impact of the proposed action on the delivery of the services.

Both Bethel and St. Francis are served by the St. Francis Police Department. Bethel pays St. Francis for this service under a contract between the communities. Both communities receive support regarding police protection from the Anoka County Sheriff's Office. There was no discussion regarding public parks or other public recreational facilities. Each community has its own fire department. The Bethel fire hall is one-half mile from the Subject Property. The delivery of these services to the Subject Property would be drastically improved by detachment and annexation, as a maintained road will provide access to the property.

Both communities have municipal sewer systems. Due to the location of the Subject Property and the restrictive covenants on parcels located between the Subject Property and the St. Francis system, there is no realistic possibility of the Subject Property obtaining access to the St. Francis sewer system. Bethel

has adequate WWTP capacity and an available sewer access point located 800 feet from the Subject Property.

(g) Existing or potential environmental problems and whether the proposed action is likely to improve or resolve these problems.

There are no existing environmental problems in the area that cannot be addressed by the present forms of government. The only two potential environmental problems that would arise relate to wetlands. Without connection to a municipal sewer system, an ISTS system would need to be installed to serve any residence constructed. Any problems with a malfunctioning ISTS system would harm the water quality in the wetlands throughout the area. There was also testimony that a failure of an ISTS on the Subject Property could impact the water quality of Sandshore Lake since the Subject Property is in its watershed. It is practical and prudent, therefore, to have Bethel in control of the area that impacts its important natural resource. Also, without detachment, any road access to the Subject Property that would be put in, for example, from the existing roadway to the southeast, would require significant wetland mitigation. These potential problems would be eliminated through detachment and annexation of the Subject Property, as the property would then be served by the Bethel sewer and WWTP facilities, and access would be provided along an existing easement.

(h) Fiscal impact on the subject area and adjacent units of local government, including present bonded indebtedness; local tax rates of the county, school district, and other governmental units, including, where applicable, the net tax capacity of platted and unplatted lands and the division of homestead and nonhomestead property; and other tax aid issues.

As a city that is experiencing significant growth in population and development, St. Francis has no legitimate concerns about ongoing increases in its tax base. The anticipated levels of growth are more than adequate to increase the tax revenues needed to address the needs of that population. By contrast, Bethel is anticipating that its growth is severely limited. Adding a few residences to an area that has similar existing development, while only modestly extending the scope of services to be provided, is a significant benefit to Bethel. With the addition of several residences, the Subject Property is likely to represent a significant increase in Bethel's property tax base.

If the detachment is denied, the Subject Property will not be developed at any time in the near future. This fact ensures that the tax revenue to St. Francis from property taxes on the Subject Property will remain inconsequential. The loss of the corresponding increase in tax revenue on Bethel would be of far greater impact than the insignificant loss of revenue to St. Francis, given the size

of their respective budgets and differences in their capacity for growth. The only increase in revenue to ISD No. 15 will occur through detachment and annexation of the Subject Property.

(i) Relationship and effect of the proposed action on affected and adjacent school districts and communities.

The City of Bethel and the City of St. Francis are both within the ISD No. 15 School District. There would be no impact on the school district arising from the proposed action.

(j) Whether delivery of services to the subject area can be adequately and economically delivered by the existing government.

The City of St. Francis is capable of providing the police and fire service to the Subject Property both adequately and economically. St. Francis cannot deliver road access or sewer service to the Subject Property on an economical basis. St. Francis has no plans to provide these services at any point in the future.

(k) Analysis of whether necessary governmental services can best be provided through the proposed action or another type of boundary adjustment.

Necessary government services can best be provided by annexation of the Subject Property to the City of Bethel. The sewer line access point lies 800 feet from the Subject Property would be simple and inexpensive to connect. The easement to connect that service already exists. Annexation would result in improved roadway access to the Subject Property. Fire protection to the Subject Property would be improved by annexation to Bethel. Further, the record in this matter suggests that the City of Bethel is more responsive to the development plans regarding the Subject Property, particularly since that development is seen as benefiting existing residents of Bethel.

(l) The degree of continuity of the boundaries of the subject area and adjacent units of local government.

The Subject Property would, if annexed, extend the western boundary of Bethel south along the length of the Subject Property. The effect is to add a square peninsula of Bethel onto the southwest corner of the existing boundary. The addition would be surrounded on three sides by St. Francis. This, in and of itself, is not a major concern. Bethel already has a similar, but much smaller peninsula of land that juts into St. Francis to the east of the Subject Property.^[50] There is no evidence in this record that such a boundary configuration has caused any problems over the years. Furthermore, the planned land use for the Subject Property is very similar regardless of which city has jurisdiction. The most similar existing development is that of the Bethel Residences and the

existing residences along Kumquat Street. The planned development on the Subject Property is a natural outgrowth of that existing use. No problems are likely to arise from this boundary adjustment.

(m) Analysis of the applicability of the State Building Code.

There are no issues affecting the state building code with respect to this petition.

Analysis on Propriety of Detachment and Annexation.

After considering the factors for incorporation in Minn. Stat. § 414.02, subd. 3, the proposed action shall be ordered on finding that it will be for the best interests of the municipalities and the property owner.^[51] This has been interpreted to mean that detachment and annexation must be in the best interests of both municipalities and the property owners.^[52]

Consideration of the statutory factors in this matter demonstrates that the detachment and annexation would benefit Bethel. It would enhance its tax base with developable residential property and allow it to spread its public utilities and other chargeable costs over a larger tax base. The property owners would also benefit. This record demonstrates clearly and convincingly that only through annexation to Bethel will the owners be able to obtain the building permit that they need to construct residences on the Subject Property. The rise in property value will benefit Bethel and the local School District through increased revenue.

St. Francis maintained that it would not see any benefits from the annexation of this property, and St. Francis would lose its portion of the property tax paid on the Subject Property. As discussed above, the tax impact on St. Francis is inconsequential. St. Francis would benefit from the Subject Property being served by sewer system, rather than ISTS systems. Having the Subject Property on sewer protects the water quality of both St. Francis and Bethel. Further, St. Francis is relieved of the costs attendant on extending road service, through existing wetlands, to the Subject Property. St. Francis itself demonstrated the burdens of continued efforts at obtaining approval for development by attempting to impose a fee, estimated at \$5,000, on the property owners to cover the City's costs for merely considering their proposals for development. This significant financial burden will be removed from St. Francis by granting the annexation petition.

Appropriate Division of Costs of This Proceeding.

When the parties are unable to agree on a division of the costs for a proceeding under Minn. Stat. § 414, the costs are to be assigned by the Chief Administrative Law Judge.^[53] In this case, the petition for detachment and concurrent annexation was brought by Petitioners and opposed by St. Francis. Bethel has played no role in the proceedings and has taken no position other

than to state that it would accept the Subject Property should detachment be ordered. Due to its passive position in these proceedings, none of the costs should be allocated to Bethel.

The Petitioners have presented the factual record on which this decision has been made. St. Francis resisted the proposed detachment and annexation, but presented no evidence (beyond the Stipulated Facts and Joint Exhibits) to support its contentions in this proceeding. The strength of the Petitioner's presentation, coupled with the absence of an affirmative presentation of facts by St. Francis leads the ALJ to conclude that a greater portion of the cost should be borne by St. Francis. The municipality did cooperate regarding the stipulation of facts and joint presentation of exhibits, and that conduct has been factored into the cost allocation. The costs of this proceeding shall, therefore, be borne 30% by the Petitioners and 70% by the City of St. Francis.

R.R.K.

^[1] Minn. Stat. §§ 414.061, 414.02, subd. 3.

^[2] Petitioner's Ex. A.

^[3] Joint Ex. 3.

^[4] Stipulated Fact No. 17 Petitioner's Ex. G.

^[5] Petitioner's Ex. D, Attachment 8.

^[6] Joint Ex. 6; Petitioner's Ex. G.

^[7] Joint Ex. 6, Table 1; Petitioner's Ex. D, Attachment 1.

^[8] Joint Ex. 6, Table 1; Petitioner's Ex. D, Attachment 1.

^[9] Joint Ex. 6, at 4; Petitioner's Ex. D, Attachment 9.

^[10] Petitioner's Ex. D, Attachments 8 and 9.

^[11] Petitioner's Ex. D, Attachment 4.

^[12] Testimony of Ry-Chel Gaustad, Tape 2; Testimony of Bourassa, Tape 2; Petitioner's Ex. D, Attachment 4.

^[13] Testimony of Bourassa, Tape 2; Petitioner's Ex. D, Attachment 4.

^[14] Testimony of Bourassa, Tape 2; Petitioner's Ex. D, Attachment 5.

^[15] Testimony of Ry-Chel Gaustad, Tape 1; Testimony of Bourassa, Tape 2.

^[16] Stipulated Fact No. 23.

^[17] Testimony of Ry-Chel Gaustad, Tape 1.

^[18] Stipulated Fact No. 7; Joint Ex. 2.

^[19] Stipulated Fact Nos. 26 and 27.

^[20] Petitioner's Ex. D, at 2.

^[21] Petitioner's Ex. K.

^[22] Stipulated Fact No. 28.

^[23] Stipulated Fact No. 24; Joint Ex. 7.

^[24] Testimony of Bourassa, Tape 3.

^[25] Testimony of Miller, Tape 4.

^[26] Testimony of Bourassa, Tape 3.

^[27] Testimony of Miller, Tape 4.

^[28] Stipulated Fact No. 25.

^[29] Testimony of Johnson, Tape 4.

- [30] Testimony of Bourassa, Tape 2; Petitioner's Ex. D, at 2.
- [31] Testimony of Bourassa, Tape 3; Testimony of Miller, Tape 4; Testimony of Johnson, Tape 5.
- [32] Testimony of Bourassa, Tape 3; Petitioner's Ex. D, at 2; Testimony of Johnson, Tape 4.
- [33] Testimony of Bourassa, Tape 3; Testimony of Johnson, Tape 5.
- [34] Testimony of Bourassa, Tapes 3 and 4; Testimony of Johnson, Tape 5.
- [35] Joint Ex. 6, at 5.
- [36] *Id.*
- [37] Joint Ex. 6, at 4-5.
- [38] *Id.*
- [39] Testimony of Ry-Chel Gaustad, Tape 2; Petitioner's Ex. K.
- [40] Testimony of Ry-Chel Gaustad.
- [41] Testimony of Miller, Tape 4.
- [42] Joint Ex. 6, at 5-6.
- [43] *Id.* at 4-5.
- [44] Minn. Stat. § 414.07, subd. 2.
- [45] Minn. R. 6000.3100.
- [46] This petition was undertaken before the recent amendment of Minn. Stat. § 414.061 to require that both municipalities join in the petition. The prior law applies to this proceeding.
- [47] Testimony of Bourassa, Tape 3.
- [48] Joint Ex. 6, at 5-6.
- [49] Joint Ex. 6, at 4-5.
- [50] Petitioner's Ex. D, Attachments 4 and 9.
- [51] Minn. Stat. § 414.061, subd. 5.
- [52] *City of Lake Elmo v. City of Oakdale*, 468 N.W. 2d 575, 578 (Minn. App. 1991).
- [53] Minn. Stat. § 414.12, subd. 3.